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Decision

Matter of: Paragon Technology Group, Inc.

File: B-407331

Date: December 18, 2012

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Amanda M. Page, Esq., and Col. Barbara E. Shestko, Department of the Air Force, and Kenneth M. Roth, Esq., and Robert Bowers, Esq., U.S. Transportation Command, for the agencies.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's evaluation of the awardee's and protester's past performance is denied, where the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Paragon Technology Group, Inc., of Vienna, Virginia, protests the issuance of a task order to PricewaterhouseCoopers LLP (PwC), of McLean, Virginia, under request for quotations (RFQ) No. HTC711-12-Q-D041, issued by the U.S. Transportation Command (TRANSCOM), Department of Defense (DOD), for support services. Paragon primarily challenges the agency's past performance evaluation and source selection decision.

We deny the protest.

BACKGROUND

The RFQ, issued under the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) Subpart 8.4, sought quotations from vendors holding General Service Administration (GSA) Mission Oriented Business Integrated Services or Logistics Worldwide contracts. The RFQ provided for the issuance of a

fixed-price task order for Total Distribution Process Improvement (TDPI) support services for a base year and two option years.

A detailed performance work statement (PWS) was provided that described the required services as including analyzing and implementing processes to make DOD's supply chain more efficient and effective.¹ PWS at 2; Contracting Officer's Statement at 1. Four specific task areas (and estimated workloads) were identified: Task Area 1, Contract Level and Task Order Management (1,840 hours for the base year); Task Area 2, Total Supply Chain Efficiency and Effectiveness Improvements (12,990 hours); Task Area 3, Optimal Transportation Design Solution (9,940 hours); and Task Area 4, Institutionalizing Distribution Improvements (8,060 hours).² PWS at 2; RFQ, append. 1, Estimated Workload.

Vendors were informed that quotations would be evaluated on the basis of three factors: technical/staffing, price, and past performance. RFQ at 5. The RFQ stated that quotations would be evaluated using several steps. First, the agency would evaluate each firm's quotation on a pass/fail basis under the technical/staffing factor. To be found acceptable, vendors were to submit a technical/staffing volume that provided (among other things) a logical approach to the tasks described in the PWS. Id. at 2. Vendors were also required to provide information explaining the vendor's allocation of workload between partnering firms or subcontractors, and specifically identifying the percentage of each task area that would be performed by such firms. Id. The RFQ provided that only acceptable quotations would be evaluated under the past performance and price factors. Id. at 3.

Next, the agency would rank acceptable quotations by price. With respect to price, vendors were required to provide a price breakdown that identified labor categories, labor rates, and labor hours by task area for the base and option years. Id. at 3.

The agency would then evaluate the vendors' past performance, beginning with the lowest-priced quotation. The RFQ provided that past performance would be evaluated as substantial confidence, satisfactory confidence, limited confidence, no

¹ The services solicited here are an expansion of services provided under a prior Total Supply Chain Process Improvements (TSCPI) contract, which was performed by Paragon from October 2009 to September 2012. Contracting Officer's Statement at 1. That contract had a value of \$11.4 million. Approximately \$9 million of this work was performed by another firm, as a subcontractor to Paragon; this other firm was acquired by PwC during contract performance. AR, Tab 9, Past Performance Summary, at 29.

² The RFQ also provided estimated workloads for the option years.

confidence, or unknown confidence (neutral).³ RFQ at 6. Firms were required to submit up to five relevant past performance references for work currently ongoing or performed within the last 3 years. Id. at 4. In this regard, the RFQ provided that the agency may consider the relevant past performance of subcontractors performing major or critical aspects of the requirement. Id. at 5. A relevant contract was defined as work that has “a logical connection” to three performance areas: DOD supply chains, commercial supply chains, and/or commercial process improvement efforts.⁴ Id. at 4. Vendors were required to complete a form for each past performance reference and to explain how the referenced work was relevant.⁵ The RFQ provided that each reference was not required to reflect performance in all three performance areas, but that vendors must address past performance in all areas. Id. Vendors were required to ensure that past performance questionnaires (provided by the RFQ) were completed and submitted by their references. Vendors were also advised that the agency may consider past performance information from other government sources, including the past performance information system.

The RFQ provided that the agency would issue the task order to the firm with the lowest-priced, technically acceptable quotation with a substantial confidence past performance rating. If none of the firms’ quotations received substantial confidence ratings, the agency would issue the task order to the firm with the lowest-priced, technically acceptable quotation that received the highest past performance rating. RFQ at 2.

The agency received six quotations, including PwC’s and Paragon’s, which the agency evaluated in accordance with the RFQ’s evaluation scheme by ranking technically acceptable quotations by price. Paragon’s acceptable quotation was lower priced than PwC’s. The agency then evaluated the acceptable vendors’ past performance. Paragon’s past performance was rated satisfactory confidence, and PwC’s past performance was rated substantial confidence. Agency Report (AR), Tab 8, Past Performance Evaluation Worksheets, at 1, 7.

³ As relevant here, substantial confidence reflected a high expectation that the offeror would successfully perform the required effort; a satisfactory confidence rating reflected a reasonable expectation of successful performance; and a limited confidence rating reflected a low expectation of successful performance. RFQ at 6.

⁴ The RFQ provided that the agency would assess the references as very relevant, relevant, or somewhat relevant. RFQ at 5. A very relevant reference was an effort that involved essentially the same scope and magnitude of effort and complexities as the RFQ, a relevant reference was an effort that involved similar scope and magnitude, and a somewhat relevant reference was an effort the involved some of the scope and magnitude. Id.

⁵ Vendors were advised that the agency was not bound by the vendors’ views of the relevance of their work. RFQ at 4.

Paragon’s satisfactory confidence rating reflected the evaluators judgment that, although Paragon demonstrated very relevant and good to exceptional performance under the incumbent contract, Paragon failed to provide sufficient past performance information for its subcontractors. AR, Tab 9, Past Performance Summary, at 28. Specifically, the agency found that Paragon proposed to use a team of [DELETED] subcontractors, but provided past performance information for only two of its proposed subcontractors, [DELETED].⁶ Paragon proposed the following workload allocation (as a percentage of each task) for itself and the two subcontractors for which it provided past performance information:

	Paragon	[DELETED]	[DELETED]
Task Area 1	[DELETED]	[DELETED]	[DELETED]
Task Area 2	[DELETED]	[DELETED]	[DELETED]
Task Area 3	[DELETED]	[DELETED]	[DELETED]
Task Area 4	[DELETED]	[DELETED]	[DELETED]

Paragon Quotation at 3.

Paragon provided two references for [DELETED] past performance with respect to that firm’s work on the Federal Emergency Management Administration’s Logistics Management Transformation Initiative (LMTI) and on the Department of the Navy’s Shipbuilding Partners and Suppliers (SPARS) contract. The agency did not consider [DELETED] LMTI performance because it was unable to contact the reference to validate [DELETED] performance. AR, Tab 9, Past Performance Summary, at 27. The agency found [DELETED] performance of the SPARS contract (for which [DELETED] received satisfactory to exceptional ratings) to be only “somewhat relevant,” because the magnitude of that contract was only 24 percent of the work solicited here. Id. Paragon also provided two references for [DELETED] past performance for work done for an unnamed global market leader in international express and for WalMart. Paragon Quotation at 9-16. The agency credited [DELETED] for its work for WalMart, but gave little weight to [DELETED] past performance because the firm was allocated to perform less than 5 percent of the effort here.⁷ Id. Based on Paragon’s references, including the limited past performance information provided for Paragon’s subcontractors (which were allocated to perform [DELETED] percent of the work under task areas 2, 3, and 4), the agency concluded that Paragon’s past performance was satisfactory. Id. at 31.

⁶ Two of the subcontractors included in Paragon’s quotation performed as subcontractors under the prior contract, but Paragon provided no past performance information for these two subcontractors.

⁷ The agency did not credit [DELETED] past performance for the unnamed international firm, because Paragon did not provide a contact for this reference.

PwC also provided 5 past performance references, all of which were for its own performance. Specifically, PwC provided references for its work under three federal contracts: the prior TSPCI contract, a DOD contract for joint supply chain architecture (JSCA), and a U.S. Marine Corps contract for enterprise lifecycle maintenance planning (ELMP). PwC also provided references for two commercial contracts with [DELETED] and [DELETED]. PwC Quotation at 4-18. The agency found that PwC had submitted two references (for its work with TSPCI and [DELETED]) that were “very relevant,” because the work had essentially the same scope and magnitude as the effort here, and that PwC’s other three references were “relevant,” as they involved at least some of the scope and magnitude as this effort. AR, Tab 9, Past Performance Summary, at 31. PwC’s past performance references received satisfactory to exceptional ratings. Id. at 29-31. The agency also noted that, in addition to the references provided, “the evaluation team had firsthand knowledge of this contractor’s performance and does not doubt this offeror’s ability to perform.” Id. at 31. Based on its references and the agency’s firsthand knowledge, PwC’s past performance received a substantial confidence rating. Id.

In accordance with the stated evaluation scheme, the task order was issued to PwC, as the lowest-priced, acceptable vendor whose past performance was rated substantial confidence. This protest followed.

DISCUSSION

Paragon challenges the agency’s evaluation of its and PwC’s past performance. In this regard, Paragon contends that the agency evaluated the firms’ past performance disparately. We have considered all of the protester’s arguments, although we address only the primary ones, and we find that none provides a basis to find the issuance of a task order to PwC unreasonable.

In reviewing protests of an agency’s evaluation and source selection decision in procurements conducted under FSS procedures, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to ensure that the agency’s evaluation is reasonable and consistent with the terms of the solicitation. See GC Servs. Ltd. P’ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 6; RVJ Int’l, Inc., B-292161, B-292161.2, July 2, 2003, 2003 CPD ¶ 124 at 5. Where a solicitation contemplates the evaluation of vendors’ past performance, the agency has the discretion to determine the scope of the performance history to be considered, provided all quotations are evaluated on the same basis and the evaluation is consistent with the terms of the solicitation. Weidlinger Assocs., Inc., B-299433, B-299433.2, May 7, 2007, 2007 CPD ¶ 91 at 8. Regarding the relative merits of vendors’ past performance information, this matter is generally within the broad discretion of the contracting agency, and our Office will not substitute our judgment for that of the agency. See e.g., Clean Harbors Env’tl.

Servs., Inc., B-296176.2, Dec. 9, 2005, 2005 CPD ¶ 222 at 3. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was improper. Id.

Paragon complains that it should have received a higher, substantial confidence rating for its past performance, because of the protester's performance of the prior contract. We find that this provides no basis to question the agency's rating of Paragon's past performance. As noted above, the agency credited Paragon for its performance under the prior contract, but also found that Paragon had failed to provide past performance references for subcontractors that would perform a substantial portion of the task order work. Although Paragon objects that the RFQ did not require firms to submit information for all its subcontractors, the solicitation stated that the agency may evaluate the past performance of subcontractors that would perform major or critical aspects of the requirement.⁸ See RFQ at 5. Here, Paragon indicated that subcontractors would perform most of the work under task order areas 2, 3 and 4, which is most of the overall task order work. Although Paragon disagrees with the agency's assessment of its past performance, citing its own incumbent performance, this does not demonstrate the agency's evaluation was unreasonable.⁹

⁸ Paragon also argues that past performance information for two of its subcontractors under the prior contract should have been easily retrieved by the agency, and was "too close at hand" to be ignored. In some limited circumstances we have recognized an agency's obligation (as opposed to discretion) to consider past performance information outside of an offeror's proposal that is "too close at hand" to ignore. See Int'l Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. This doctrine is not intended, however, to remedy a vendor's failure to include information in its proposal or quotation. See L-3 Servs., Inc., B-406292, Apr. 2, 2012, 2012 CPD ¶ 170 at 12 n.10. In any event, Paragon's objection in this regard is untimely given that Paragon learned on September 13 (prior to filing its September 14 protest) that the agency was unable to validate the past performance for four of Paragon's subcontractors. Paragon first raised this concern in its October 25 comments, although it knew or should have known as of September 13 that the agency had not considered the subcontractors' past performance.

⁹ Paragon complains that the best value decision incorrectly states that "past performance could only be validated for one of [Paragon's] [DELETED] subcontractors," see AR, Tab 9, Best Value Decision, at 9, even though the agency was actually provided past performance information for two of Paragon's subcontractors. The agency acknowledges this error, which it describes as a "scrivener's error," but contends that it did not affect Paragon's satisfactory past performance rating. Supp. Legal Memorandum at 29. We agree. Accordingly, this error had no bearing on the selection of PwC's quotation.

Paragon also challenges the agency's evaluation of PwC's past performance, arguing that PwC's rating should have been lower. In this regard, Paragon complains that the agency found three of PwC's past performance references to be relevant with respect to performance areas 1 and 3, even though PwC provided no past performance information for these references with respect to these areas. The agency explains, however, that PwC's quotation and the evaluators' own personal knowledge demonstrated that PwC's past performance references were relevant for these performance areas. Specifically, with regard to PwC's prior contract with [DELETED], the evaluators found that PwC's narrative explanation of the contract showed relevant experience with respect to performance area 1. With regard to the TSPCI contract, the evaluators had personal knowledge of PwC's work that established the relevance of this work to performance area 3. The agency also states that the evaluators received information from a past performance questionnaire that established the relevance of PwC's JSCA contract to performance area 3. See Supp. Legal Memorandum at 28; AR, Tab 8, Past Performance Evaluation Worksheets, at 8, 9, 12.

Paragon also contends that the agency evaluated the firms' past performance disparately. The protester first objects that its SPARS contract reference was found only somewhat relevant because the contract involved only about 25 percent of the value of the work solicited here. In contrast, PwC's references for the JSCA contract and the ELMP contract were found to be relevant, even though these two references involved contracts that were worth only 25 percent and 20 percent, respectively, of the contract at issue here. The agency explains that, consistent with the terms of the RFQ, the agency considered both the magnitude and scope of references, and that PwC's JSCA and ELMP contracts were closer in scope to the efforts being procured here than Paragon's SPARS contract. See AR, Tab 8, Past Performance Evaluation Worksheets, at 6, 9, 10. Specifically, the agency found that the scope of these two contracts was very relevant, but that, given the limited magnitude of the two contracts, they should only be considered relevant overall. Id. at 9, 10. In contrast, Paragon's SPARS contract was only found to be "in line with the work required" and "not as complex." Id. at 6. The record does not show that the agency's evaluation was unreasonable in this regard.

Paragon also objects that PwC received a substantial confidence past performance rating, where the firm also did not provide past performance references for its subcontractors. Unlike Paragon, however, PwC indicated that it would perform [DELETED] percent of the work itself. See PwC Quotation at 4. In contrast, Paragon indicated that its subcontractors would perform [DELETED] percent of the work under task areas 2, 3, and 4, which constituted 95 percent of all the work to be performed. The agency's reasonable concern with Paragon's failure to provide past performance information for subcontractors performing a major part of the work is not present with respect to PwC's quotation, where PwC intends to perform substantially all of the work itself.

Paragon also protests that PwC has a potential organizational conflict of interest, because PwC acquired a firm that had a conflict of interest (OCI) under the prior contract related to that firm's work on DOD's Joint Strike Fighter program. Paragon asserts that the work on the Joint Strike Fighter program will continue under the task order. The agency responds that there is no possible OCI because the specific work supporting the Joint Strike Fighter program is not being solicited here. Although Paragon disagrees, it points to nothing in the PWS or elsewhere that demonstrates that this work is included in the task order here. Accordingly, we find the agency's conclusion that there is no potential OCI to be reasonable.

We deny the protest.

Susan A. Poling
General Counsel